

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )  
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**Reexamination of Roaming Obligations of  
Commercial Mobile Radio Service Providers** )  
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WT Docket No. 05-265

**REPLY COMMENTS OF CLEVELAND UNLIMITED, INC.**

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**REPLY COMMENTS OF CLEVELAND UNLIMITED, INC. ON THE  
NOTICE OF PROPOSED RULEMAKING**

Cleveland Unlimited, Inc. ("CUI") hereby submits its reply comments in response to the *Notice of Proposed Rulemaking*, FCC 05-160, released August 31, 2005 (the "*NPRM*")<sup>1</sup> in the above-captioned proceeding. The following is respectfully shown:

**I. BACKGROUND**

CUI does business under the brand name "Revol." Revol offers wireless voice and data services on a no-contract, flat-rate, unlimited usage basis in selected metropolitan markets in the United States. Revol's service allows its customers to place unlimited local and nationwide long distance wireless calls from within Revol's calling area, and to receive unlimited calls from any area, under a simple and affordable flat-rate monthly plan. For an additional fee, Revol's customers may extend the calling area to include certain other areas. Revol also provides, on an à la carte basis, downloads of ring-tones, games, and other value-added services.

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<sup>1</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers* (WT Docket No. 05-265); *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services* (WT Docket No. 00-193), Notice of Proposed Rulemaking, 20 FCC Rcd 15047 (2005).

CUI commenced operations by acquiring the assets of Cleveland PCS, LLC, d/b/a Northcoast PCS on July 14, 2004. Northcoast PCS was licensed to serve the Cleveland/Akron Ohio metropolitan area. This market includes a population of 3 million people ("POPs") of which Revol's network currently covers 2.6 million (approximately 88 of the covered POPs). Following the acquisition, the CUI recruited the current management team, which initiated the rebranding process of Northcoast PCS into the current brand "Revol."

Revol's network utilizes CDMA 1xRTT technology, which provides substantially more voice and data capacity than other commonly deployed wireless technologies and gives the Company a network capacity advantage in its markets. In addition, the Cleveland area network has been expanded. The result has been rapid increases in the current customer base.

Revol also has been expanding its market presence. Through contractual arrangements with Auction 58 participant CSM Wireless, LLC, Revol is expecting to be in a position to make Revol branded service available in a significant number of "new" markets including Canton, OH, Columbus, OH, Youngstown, OH, and Indianapolis, IN. Other regional expansions are under consideration as well.

While Revol has based its business model on an innovative, flat-rate plan geared primarily toward users who do not travel extensively outside their local calling areas, Revol is currently seeking roaming agreements. Such agreements would enable Revol to provide its customers the vital ability to use their Revol phones when they travel outside their service areas, whether for business or pleasure.

## II. ROAMING IS IMPORTANT TO REVOL AND ITS CUSTOMERS

As described above, Revol has so far focused its efforts on providing high-quality, affordable services within its own service area. Revol believes that these services provide a valuable alternative to the plans offered by national wireless carriers, as they offer Revol customers a range of services within their local calling area at a predictable, flat rate with no long-term contract. Due to these advantages of the Revol service, many Revol customers have chosen to use their wireless service as their only telephone service in place of a traditional landline.

Despite the benefits offered to customers by the Revol service, it is critical both to Revol and its customers that these customers be able to use the Revol service when traveling outside their local calling areas. While obtaining roaming agreements would not reasonably be expected to enable Revol to compete with national carriers outside of its own service areas, such agreements would greatly increase the viability of Revol's service within these areas. More importantly, such agreements would benefit Revol's customers enormously by allowing them to use their service when they travel outside Revol's core service area in northeastern Ohio.

Revol agrees with those carriers that emphasize the importance of roaming in their comments. For example, as Verizon Wireless notes, "[c]ustomers increasingly demand the ability to travel outside of their home markets and use their wireless services as they travel."<sup>2</sup> Similarly, SouthernLINC Wireless observes that "[i]t is only through roaming that *all* consumers are able to obtain access to mobile services nationwide while ensuring that such services are deployed as widely as possible . . . ."<sup>3</sup>

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<sup>2</sup> Comments of Verizon Wireless at 10.

<sup>3</sup> Comments of SouthernLINC Wireless at 15 (emphasis in original).

### **III. THE COMMENTS IN THIS PROCEEDING DEMONSTRATE A NEED FOR FCC ACTION**

The majority of the parties that have filed comments in this docket—and virtually all of the commenting parties other than the four national wireless carriers—agree that FCC action is needed to ensure that roaming services are made available to independent carriers and their customers.<sup>4</sup> As shown below, a focus on the correct product market—*i.e.*, wholesale CMRS roaming—leads to the conclusion that free competition alone will not necessarily provide consumers with the benefits of automatic roaming services, much less at reasonable rates. The experiences of other carriers such as Leap Wireless and SouthernLINC Wireless demonstrate the market's failure in this regard.

#### **A. The Wholesale CMRS Roaming Market is Not Competitive**

Revol acknowledges that the overall market for wireless services is generally robust—albeit highly concentrated—at the retail level.<sup>5</sup> For example, there may be as many as six or seven wireless carriers serving the *consumer* market in a given area. The national carriers, in arguing that no FCC intervention is needed, cite evidence to show the existence of competition in the CMRS *retail* market and for the most part ignore the issue of whether this is the relevant product market.<sup>6</sup>

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<sup>4</sup> See, e.g., Comments of SouthernLINC Wireless at 2; Comments of Leap Wireless International, Inc. (“Leap Wireless Comments”) at 16; Comments of United States Cellular Corporation at 10; Comments of MetroPCS Communications, Inc. (“MetroPCS Comments”) at 13.

<sup>5</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, 20 FCC Rcd 15908, Tenth Report (2005).

<sup>6</sup> See, e.g., Comments of T-Mobile USA, Inc. (“T-Mobile Comments”) at 5-6; Comments of Cingular Wireless LLC at 10.

Of the filings made by the national carriers, only economist Gregory L. Rosston, writing on behalf of Sprint Nextel, even attempts to define the relevant product market.<sup>7</sup> Rosston inexplicably reaches a conclusion that the CMRS *retail* market is the relevant product market. However, Rosston bases this conclusion almost entirely on one paragraph of the FCC's order approving the AT&T Wireless/Cingular Merger, without any independent economic analysis.

While other parties and their economists will undoubtedly provide a more detailed refutation of the numerous flaws in Rosston's reasoning, the most significant flaws are his unquestioning reliance on the FCC's erroneous determination that the combined AT&T Wireless/Cingular entity would not be able to effectuate a profitable price increase in roaming services, and his generalization of this erroneous finding to the entire CMRS roaming market.<sup>8</sup> The FCC's (and Rosston's) analysis could be correct *only* if one were to assume a world where each national carrier's roaming partner has a reciprocal, symmetrical agreement, *and* each such roaming partner is in a position to bargain on equal footing with the national carrier so as to retain such terms indefinitely. Otherwise, there would be no reason to assume that a national carrier's decision to raise the rates it charges for inbound roaming would have *any* effect on its own customers. While Rosston's assumption (*i.e.*, that the FCC was correct in the AT&T/Cingular decision) may have been useful for a purely academic exercise, this assumption has no basis in commercial realities as experienced by the independent carriers that have filed comments in this proceeding.

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<sup>7</sup> See "An Economic Analysis of How Competition Has Reduced High Roaming Charges," Gregory L. Rosston, submitted as an attachment to Comments of Sprint Nextel (the "Rosston Report").

<sup>8</sup> Under the Commission's reasoning, any increase by Cingular in its roaming rates would result in retaliation by Cingular's roaming partners and a loss of Cingular's own customers. See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket No. 04-70, 19 FCC Rcd 21522, 21591 (2004).

If the *retail* CMRS market can be characterized by robust, if imperfect, competition, the picture is much different with respect to the separate and distinct *wholesale* market for CMRS roaming.<sup>9</sup> For example, nearly half of the fifty largest basic trading areas (“BTAs”) in the United States have a duopoly in the wholesale roaming market for CDMA-based services, *i.e.*, those used by Revol.<sup>10</sup> Revol submits that the Commission has never found a duopoly to be an example of effective competition, and that FCC action is therefore appropriate here.

**B. Experiences of Other Commenting Parties Shows that at Least Some National Carriers Have Abused Their Market Power**

The above analysis shows that the market for CMRS roaming services is not a fully competitive market, and is therefore one in which national carriers can engage in anticompetitive conduct that would not be possible under competitive conditions. Other parties commenting in this proceeding have confirmed that not only *can* the national carriers engage in such conduct, but that they have done so and are continuing to do so.

For example, SouthernLINC Wireless describes the difficulties it has had in obtaining a roaming agreement with Sprint Nextel and Nextel Partners. According to SouthernLINC Wireless, Nextel Partners has refused to enter into a roaming agreement at all, and Sprint Nextel has agreed to “only a limited, non-reciprocal agreement . . . for which SouthernLINC Wireless must pay rates that exceed those typical in the industry.”<sup>11</sup>

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<sup>9</sup> See “Report: The Economics of Wholesale Roaming in CMRS Markets,” R. Preston McAfee, submitted as Attachment B to SouthernLINC Wireless Comments (the “McAfee Report”); *see also* “Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Service: An Economic Analysis,” ERS Group (Nov. 28, 2005) (“ERS Report”) at 7, submitted as Attachment A to Leap Wireless Comments (stating that “the wholesale market for roaming services for each technology is a separate market because neither regional operators nor their subscribers have any ability to substitute”).

<sup>10</sup> McAfee Report at 11, Table 3.

<sup>11</sup> Comments of SouthernLINC Wireless at 3.

The *ERS Report* demonstrates that national carriers also have taken advantage of their market power to discriminate against regional carriers. For example, ERS indicates that Leap Wireless reportedly pays one large carrier an average of \$0.28 per minute for roaming charges.<sup>12</sup> On the other hand, mobile virtual network operators (“MVNOs”) generally pay large carriers between \$0.04 and \$0.08 per minute, and affiliates pay between \$0.05 and \$0.10 per minute.<sup>13</sup> Through careful economic analysis, ERS reaches the same conclusion dictated by common sense—if the wholesale prices in a given market exceed the retail market, the market is not functioning properly.<sup>14</sup> Such a market failure clearly warrants FCC action.

**C. The FCC Must Act to Ensure the Availability of Roaming Services at Just, Reasonable, and Non-Discriminatory Rates**

The foregoing analysis demonstrates that the relevant market—wholesale CMRS roaming services—is not fully competitive, and that national carriers have engaged in unreasonable discrimination against smaller CMRS operators. As described below, the FCC must require that all carriers provide automatic roaming services upon reasonable request, at reasonable and non-discriminatory rates.

The FCC has previously concluded that roaming is a common carrier service.<sup>15</sup> Revol agrees with this conclusion, which compels a finding that all roaming services—including automatic roaming—must be provided in accordance with Title II of the Communications Act. Specifically, carriers must comply with the following statutory provisions in connection with

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<sup>12</sup> *ERS Report* at 11.

<sup>13</sup> *Id.*

<sup>14</sup> See *id.* at 16 (observing that “setting roaming rates above prevailing retail rates simply cannot improve total welfare; this practice can only reduce total output, limit competition, and limit the options available for customers”).

<sup>15</sup> See Comments of MetroPCS Communications, Inc. (“MetroPCS Comments”) at 13 (citing *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers* (WT Docket No. 05-265); *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services* (WT Docket No. 00-193), Notice of Proposed Rulemaking, 20 FCC Rcd 15047 at para. 8 (1996)).



roaming services: Section 201(a), which requires that service be provided “upon reasonable request therefor”; Section 201(b), which requires that rates for common carrier communications services be just and reasonable; and Section 202, which prohibits a common carrier from making any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications services.<sup>16</sup>

If the FCC were to confirm its previous finding that roaming is a common carrier service by adopting an explicit automatic roaming requirement, this would remove any ambiguity as to the applicability of the Section 208 complaint process to roaming-related matters.<sup>17</sup> In connection with the Commission’s adoption of such a requirement, Revol urges the Commission to adopt the proposal made by MetroPCS that roaming agreements be made publicly available.<sup>18</sup> Revol, like many small carriers, has had success in the interconnection area largely due to the availability of “opt-in” agreements. If Revol could see the terms of other roaming agreements, it expects that it would have a similar experience with respect to roaming by virtue of its ability to ensure that it is being treated fairly and lawfully by the national carriers. These carriers, in turn, would have greater incentive to govern themselves in accordance with their Title II obligations. Moreover, to the extent that a carrier were to find that it was being discriminated against, it would have access to information that could be used in support of a Section 208 complaint prior to incurring the significant expense of such a proceeding. This would differ considerably from the current situation, in which a carrier contemplating a Section 208 complaint would initially be

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<sup>16</sup> See 47 U.S.C. §§ 201(a), 201(b), and 202(a).

<sup>17</sup> Unfortunately, the Commission’s previous statements concerning roaming have been a model of neither consistency nor clarity. Despite its finding that roaming is a common carrier service, the FCC previously declined to impose an automatic roaming requirement. It is therefore not clear whether the Commission would even consider a Section 208 complaint based on a carrier’s refusal to enter into a roaming agreement.

<sup>18</sup> See MetroPCS Comments at 26-27.

forced to rely entirely on its employees' instincts as to whether the other carrier is acting lawfully.

Revol supports the CMRS Roaming Principles attached to the Reply Comments of SouthernLINC Wireless. These principles, if adopted, would strengthen the existing common carrier obligations of CMRS operators with minimal intervention in the market and minimal FCC oversight. Such action by the Commission would clearly serve the public interest by allowing consumers to benefit from wider availability of roaming services, at lower prices, than are currently available. A copy of the CMRS Roaming Principles is attached hereto.

### **CONCLUSION**

Based on the foregoing reasons, Revol respectfully requests that the Commission adopt an automatic roaming requirement in accordance with the CMRS Roaming Principles attached hereto.

Respectfully submitted,

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## CMRS Roaming Principles

Roaming services are an essential component of mobile telecommunications services and fulfill an important public safety role. Ensuring that consumers have near ubiquitous access to roaming services, no matter where they travel, is in the public interest. Access to roaming services is particularly critical for consumers who are underserved or who live in rural and remote areas with fewer competitive options. Access to roaming services fosters competition in the wireless market and encourages new entrants. Given the importance of roaming services, the FCC should adopt rules to facilitate automatic roaming for all wireless customers based upon the following principles:

- Carriers must provide in-bound automatic roaming (i.e., permitting another carrier's customers to roam onto its network) to any requesting carrier with a technologically compatible air interface. All services that a carrier is currently offering (e.g., voice, data, dispatch) must be offered to a requesting carrier with a technologically compatible air interface.
- Carriers must provide in-bound automatic roaming services under rates, terms and conditions that are just, reasonable and non-discriminatory. In this respect, the FCC clarifies that Sections 201 and 202 do apply to roaming services.
- Carriers must negotiate in good faith.
  - FCC involvement is required only if a complaint is filed.
- The §208 complaint process should be strengthened to ensure it is an effective avenue for redress. To do so the FCC should incorporate the following presumptions:
  - A reasonable rate presumption. FCC should adopt the presumption that a just and reasonable wholesale rate for roaming cannot be higher than the carrier's best retail rate or average retail rate per minute.
  - A technical feasibility presumption. If a carrier is already providing roaming service (data, voice, dispatch) to other carriers using the same air interface then the roaming service will be presumed to be technically feasible (shifting the burden of proving it is not technically feasible)
  - A rapid response mechanism. Because of the competitive nature of the wireless industry, complaints cannot be allowed to languish indefinitely. Therefore, roaming complaints will be placed on the Enforcement Bureau's Accelerated Docket under Section 1.730 of the Commission's Rules.